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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

TONY BERNARD MADISON,

Defendant and Appellant.

B272005

(Los Angeles County  
Super. Ct. No. BA328887)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sam Ohta, Judge. Reversed.

Brad Kaiserman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Abtin Amir, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Tony Bernard Madison appeals the denial of his petition for resentencing pursuant to Proposition 47, enacted by voters in the General Election in November 2014. Respondent agrees the trial court denied the petition under the wrong provision, as do we. We reverse.

In 2007, appellant was charged with one felony count of second degree burglary (Pen. Code, § 459; all undesignated statutory citations are to the Penal Code) and one felony count of receiving stolen property (§ 496, subd. (a)), along with several prior convictions, after he broke into a business at 5:00 a.m. and stole \$600 worth of cash and coins inside. He pled no contest to the receiving stolen property count. The court dismissed the second degree burglary count and sentenced him to three years in state prison.

On February 24, 2016, appellant petitioned to have his receiving stolen property conviction reclassified as a misdemeanor. The trial court denied the petition because “[t]he business was closed at the time of the 459. The offense is ineligible for Prop. 47.”

Proposition 47 reduced certain felony offenses to misdemeanors and created a procedure by which a defendant who has served his or her sentence to petition to reclassify the offense as a misdemeanor. (§ 1170.18, subds. (f), (g).) As relevant here, Proposition 47 added section 459.5, which reclassifies certain second degree burglaries as misdemeanor “shoplifting” if they involve “entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours,” when the value of the property taken does not exceed \$950. (§ 459.5, subd. (a).) Proposition 47 also amended section 496 to provide that receiving stolen property is a

misdemeanor if the value of the property does not exceed \$950.  
(§ 496, subd. (a).)

Appellant pled guilty only to receiving stolen property, which contains no element related to business hours. Thus, the trial court was mistaken when it relied on that element to deny appellant's petition.

### **DISPOSITION**

The court's order is reversed and the matter remanded for the court to conduct a new hearing under the applicable provision.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.